c.s. 1002 (3)

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION No. 2033 OF 2004

PETITIONER

Bippan Goldar, aged about 35 years, S/o Late Shri Sharad Chandra Goldar, Panchayat Karmi, Gram Panchayat, Udaipur, Block Koilibeda, District Kanker (Chhattisgarh)

Versus

RESPONDENTS

1. State of Chhattisgarh through the Secretary, Department of Panchayat and Rural Development, D. K. S. Bhawan, Mantralaya,Raipur (Chhattisgarh)

2. The Collector, Kanker, District Kanker (Chhattisgarh)

3. Deputy Director, Panchayat & Social Welfare, Kanker, District Kanker (Chhattisgarh)

4. Janpad Panchayat, Koilibeda, through its Chief Executive Officer, District Kanker, (Chhattisgarh)

5. Gram Panchayat Udaipur through the Sarpanch, Udaipur, Block, Koilibeda, District Kanker (Chhattisgarh)

RECEIVED COPY 12/10/04 Clerk to A. G. Bilaspur

P. R. No. 19944/04 Presented by Shri Sameer Verma dated 12-10-04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(42)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 2033 ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

27.10.2006

Shri S.R.J. Jaiswal, learned counsel for the petitioner.
Shri Sandeep Yadav, learned Dy. G. A. for the State/respondents No. 1, 2 & 3.
Shri Alok Bakshi, learned counsel for respondent No. 4.

The petitioner has filed the instant petition against the impugned order dated 10.6.2004 (Annexure P/1) passed by Deputy Director, Panchayat and Social Welfare, Kanker whereby the notification under Section 69 (1) of Panchayat Raj Adhiniyam 2000 declaring the petitioner as Secretary of Gram Panchayat, Udaipur, Janpad Panchayat, Koyilbeda, District Bastar, has been cancelled with immediate effect.

Learned counsel for the petitioner submits that the above order has been passed without conducting any enquiry on the allegation that the petitioner was involved in embezzlement of 6600 quintals of rice and was responsible for destroying the food permit and also did not reply the show cause notice issued to him in this regard till the date of passing of impugned order. From the documents annexed with the petition it is clear that the petitioner was earlier appointed as Panchayat Karmi with effect from 26th October 1995 by the Gram Panchayat, Udaipur vide order of Annexure P/2. Subsequently, Collector, Panchayat Section, District – Bastar vide his order dated 19.6.1997 appointed the petitioner as Secretary of Gram Panchayat, Udaipur. After issuance of show cause

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2033 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

notice the petitioner replied the same vide Annexure P/4. However, the impugned order has been passed without conducting any enquiry only on the ground that the petitioner has failed to reply the show cause notice issued to him.

Learned counsel for the petitioner placing reliance on the order of this Court dated 25.7.2006 passed in **W.P.No. 1656/2006** in the matter of **Rooplal Nayak Vs. State of Chhattisgarh and others**, submits that the impugned order cannot be passed without conducting a regular departmental enquiry as envisaged under Rule 7 of the M.P. Panchayat Service (Discipline and Appeal) Rules, 1999.

Shri Alok Bakshi, learned counsel for respondent No. 4 fairly concedes that the impugned order has been passed without conducting a regular departmental enquiry as envisaged under Rule 7 of the Rules and the order cited above is squarely applicable in the instant case.

I have heard learned counsel for the respective parties and have perused the return filed on behalf of respondent No. 4 and the documents annexed with the petition.

From perusal of impugned order of Annexure P/1 it is found that the same has been passed only after issuance of show cause notice to the

P.T.O.

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 2033 ..... **सन्** 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ~3~	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner whereby certain allegation of embezzlement of rice has been made against him and he was alleged to have destroyed the food permit. It is also alleged that the petitioner did not reply the said notice. The order impugned is admittedly a major penalty in terms of Rule 5 (b) (iv) of the Rules and the same can not be imposed on a member of Panchayat Service without conducting a regular departmental enquiry as envisaged under Rule 7 of the Rules and for this reason, the impugned order passed by the Deputy Director, Panchayat and Social Welfare, Kanker (Annexure P/1) deserves to be quashed.

In the result and for the foregoing discussions, writ petition is allowed. Impugned order dated 10.6.2004 (Annexure P/1) is quashed. The petitioner is entitled to all benefits, pecuniary and otherwise flowing from the quashing of the impugned order of Annexure P/1 dated 10.6.2004. It is further made clear that this order shall not come in the way of respondents from initiating disciplinary action against the petitioner for the alleged misconduct committed by him, if they are so advised, strictly in accordance with law and in terms of the procedure prescribed in Rule-7 of the Rules. However, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge

P.T.O.